UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,325	12/08/2003	Jerome Skuba	Skuba-P1-03	2418

28710 7590 03/08/2007

PETER K. TRZYNA, ESQ.
P O BOX 7131
CHICAGO, IL 60680

EXAMINER	
PALO, FRANCIS T	
ART UNIT	**PAPER NUMBER**
3644	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/730,325	SKUBA, JEROME	
	Examiner	Art Unit	
	Francis T. Palo	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 December 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment/ Arguments

Applicant's arguments filed 12/1/06 have been fully considered but they are **not persuasive**.

Applicant submits that no cited art mentions the structure of a corporate logo garden, that any modification of Kawamoto to reach the claimed structure would be hindsight, and that the rejections of the instant claims as submitted in the office action mailed 8/25/06 are believed to be moot in view of the amendment.

Applicant further requests in his *Remarks* that "If an allowance is not believed to be appropriate upon reviewing the foregoing, prior to the next office action, an interview is requested", and that "If the prosecution of this case can be in any way advanced by a telephone conversation, the examiner is requested to call the undersigned".

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper.

See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Kawamoto teaches in his system that a garden with an overall uniformity and a beautiful view can be created in a location where the garden should be created, including the rooftop and balcony of a building or within a lot (USPTO translation; [0053]); it is respectfully submitted that the garden of Kawamoto encompasses a corporate logo garden as claimed, as in turning to the instant disclosure for guidance on the meaning of a corporate logo, it is noted on page-8 of the instant specification that applicant recites, "it is an additional object to provide a system for commercially producing a landscape or **garden design**, such as a corporate logo pattern".

It is respectfully maintained that Kawamoto anticipates or renders obvious a corporate logo garden as claimed, as that form of garden design is readable on a garden with an overall uniformity and a beautiful view as taught by Kawamoto and as contemplated by the instant invention in the form of a corporate logo.

In response to the request to explain in greater detail the contention that a corporate logo has the same function as the garden of Kawamoto; **Gross '822** teaches in 1889 that it is common to plant the seeds of flowers and other plants so that the plants will appear in various ornamental and regular designs or forms directly on or in the ground (col.-1, third paragraph) and further discloses the laying out of any desired design or form (col.-1, last paragraph).

Additionally, **Burger '577** (1960) teaches the layout of a self-planted flower garden corresponding to the originators feelings and ideas and that the carrying plate itself can have any desired shape (col.-1, lines 29-50 thereabout).

Likewise, **Shioi '004** and **Fukuda '705** teach methods of sowing patterns and figures (see their figures) which could be utilized in the system of Kawamoto particularly as restoration means as taught by Kawamoto, further the figures depict designs readable on "logo's".

In view of the amended claim language directed to "installing the piece, so that the roots can knit essentially unimpeded with earth below the piece at the user's garden location" as claimed; while the manufactured multiple standardized garden items of Kawamoto are incapable of knitting with the earth below due to their containment means as claimed, the garden items of Kawamoto remain readable on the "knitting" limitation in the construction of and restoration of existing garden items as taught by Kawamoto and as discussed below in the rejection of the amended claims.

Further, in regard to the second request, the examiner does not feel prosecution of this case can be advanced by a telephone discussion (that is, passed to issue), and this office action is made final following the previous four non-final office actions already afforded the applicant;

also, the examiner regrets that there was insufficient time from the reviewing of the applicants amendments and comments and rendering of a response to accommodate an interview prior to the timely mailing of this office action as requested in the *Remarks* filed. However, as this office action is made final, applicant is afforded sufficient statutory time to consult with the examiner on means to continue prosecution of this application.

Regarding the discussion of the claims to follow, only the amended claims have been revisited while the unamended claims as filed are maintained as previously submitted.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-21 are rejected under 35 U.S.C. 102(a),

as anticipated by or, in the alternative, under 35 U.S.C. 103(a),

as obvious over Kawamoto (JP 10313690A) 1998;

Priority Date (JP0127110) 5/1997.

Regarding amended **claim-1**:

Kawamoto '690 teaches a **garden creating method** of successively arranged multiple standardized garden items ('690 claim-1), which is read as **forming a design** and **implementing the design**, as claimed.

Kawamoto further depicts in the figures **forming pieces** (figures 4,5, 11-18 and 22) corresponding to a portion of the design (figures 3,6,7), as claimed; specifically, a grass piece (figure-5), plants (figure-22) and stone (figure-4) among others, are depicted as claimed.

Kawamoto also teaches [0045] **garden items** (21-24 and 30) are **formed**, **packaged** and **shipped** (as in transported to a user's garden location as amended) and [0006] that the size and shape of the garden items are not limited to parallelepiped shape, and any in the size and shape that **workers can carry around** can be used.

Finally, in consideration of the amended claim language directed to "installing the piece, so that the roots can knit essentially unimpeded with earth below the piece at the user's garden location" as claimed; while the manufactured multiple standardized garden items of Kawamoto are incapable of knitting with the earth below due to their containment means as claimed, the garden items of Kawamoto remain readable on the "knitting" limitation in the construction of and restoration of existing garden items as taught by Kawamoto.

Specifically, Kawamoto teaches [0008] that as depicted in figures 17 and 18, frame (2a) is filled with soil (2b) and lawn (2c) is planted over this arrangement, and [0032] that roots of said lawn (2c) are strongly rooted in the soil; the examiner submits that this system is readable on "installing the piece, so that the roots can knit essentially unimpeded with earth below the piece at the user's garden location" as claimed.

Regarding amended **independent claim-2**:

The discussion above regarding claim-1 is relied upon as encompassing the instant claim, that is, Kawamoto teaches forming a design and forming pieces corresponding to the design by growing mats of roots of plants at at least one grower location. Kawamoto further teaches forming pieces containing mats of grass (figures 17,18) and moss (figures 12-16) read as, growing mats of respectively different kinds of plants. Harvesting and transporting the mats is likewise discussed above as is the installation of the mats as amended in the instant claim.

Regarding **claim-3**:

The discussion above regarding claim-2 is relied upon.

Kawamoto teaches grasses as discussed above, and as claimed.

Regarding **claims 4 and 5**:

The discussion above regarding claim-3 is relied upon.

Second and third members as claimed, are readily apparent from the figures of Kawamoto; specifically in figures 3,6,7.

Regarding **claims 6-15, 18 and 19**:

The discussions above regarding claims 1 and 3 are relied upon.

Kawamoto teaches lawn [0007], moss [0008] and that the garden items should not be limited to only those items that are listed [0007]; as there are many species of grasses (both ornamental and lawn species) and likewise moss, Kawamoto thus encompasses the eight mat members as claimed in the instant claims.

Regarding repeating **claims 16 and 17** (revised):

The discussions above regarding claims 1 and 2 are relied upon.

Kawamoto teaches in his system that a garden with an overall uniformity and a beautiful view can be created in a location where the garden should be created, including the rooftop and balcony of a building or within a lot (USPTO translation; [0053]); it is respectfully submitted that the garden of Kawamoto encompasses a corporate logo garden as claimed, as in turning to the instant disclosure for guidance on the meaning of a corporate logo,

it is noted on page-8 of the instant specification that applicant recites, "it is an additional object to provide a system for commercially producing a landscape or **garden design**, such as a corporate logo pattern".

It is respectfully maintained that Kawamoto anticipates or renders obvious a corporate logo garden as claimed, as that form of garden design is readable on a garden with an overall uniformity and a beautiful view as taught by Kawamoto and as contemplated by the instant invention in the form of a corporate logo.

Regarding amended **claim-20**:

The discussions above regarding amended claims 1 and 2 are relied upon as encompassing the limitations of the instant claim.

Regarding new **independent claim-21**:

The revised discussions above regarding claims 1, 2, 16 and 17 are relied upon as teaching the limitations of the new independent claim.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The new references cited in the PTO-892 form for applicant's consideration are discussed above in the response to the Remarks.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 571-272-6907. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Francis T. Palo

Francis T. Palo
Primary Examiner
Art Unit 3644